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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,215	01/14/2004	Bernhard Dehmer	860-011643-US(PAR)/200301	4868

22878 7590 12/13/2007  
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EXAMINER
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GORDON, BRIAN R

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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12/13/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/757,215	DEHMER, BERNHARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian R. Gordon	1797	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 20-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed October 4, 2007 have been fully considered but they are not persuasive. Applicant has amended claims 1 and 31, to further incorporate narrative phrases. The phrase "for installation to a liquid channel" is not further limiting. The phrase is directed to how applicant intends for the hinged septum to be employed. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The liquid channel is not positively claimed as an element of the apparatus. If applicant intends for the liquid channel to be considered as an element of the device it should be positively claimed as such. As presently drafted the claim does not require or limit the septum to being installed on a liquid channel. The claim states the hinged septum is capable of being installed on a liquid channel. This does not preclude applicant's septum from being installed on any other container or object. As such it is not required that the prior art disclose a hinged septum being installed on a liquid channel. Any limitations directed to the unclaimed liquid channel are not further limiting of the apparatus (claims 2, 5-6, 8-9, 22-23).

Applicant further amended the claim to recite the how the deposition device is intended to be used with the flap. The phrase arranged to contact the flap is not further structurally limiting of the device. It is only required that the deposition device be capable of being contacted with the flap. As such if the range of motion of a prior art

deposition device allows for it to be contacted with the flap, it meets the limitation of the claim. What is meant by arranged to contact? Does an operator hold the device in his hand and has the freedom to move it or place it in contact with the flap as so desired? Is the apparatus an automated device the includes a controller, computer system, program, etc. that directs or automatically moved the deposition device such that it contacts the flap? As presently drafted it is unclear what constitutes "arranged to contact the flap".

Chang et al. clearly meets the limitations of the device. Chang discloses a hinged closure device including inclined flap 36 that can be installed on a container (see Figures 1-3). Chang further teaches sampling device 50 (deposition device) is employed and capable of contacting the flap (see figure 12 and paragraph 0035).

For reasons given herein, the previous rejection is hereby maintained.

***Information Disclosure Statement***

1. The information disclosure statement filed January 14, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-17 and 20-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

As to claim 1 it is unclear how the term "inclined" further limits the flap. Furthermore such incline is mentioned in respect to an unclaimed liquid channel. It is unclear if applicant intends for the liquid channel be an element of the septum. Is the channel an element of a separate device? Furthermore there is no indication as what is the longitudinal axis. Is it vertical, horizontal, slanted? Term longitudinal is directed to the dimension in which the device extends the furthest. Furthermore there is no indication as to which direction the flap is inclined with respect to such axis. It is unclear if the flap is opened upwardly or downwardly with respect to the axis. Either direction would constitute an inclined angle. However, from the draws it appears the direction is downward/inwardly. The claim should clearly reflect such.

For the purpose of examination, it appears the hinged septum is attached to a container having a liquid channel 25 and the hinge of the septum allows for the flap of the septum to open inwardly (inclined) into the liquid channel and subsequently return to a closed position as well.

Claim 2 recites the limitation that the rim is shaped to the contour of the unclaimed liquid channel. The liquid channel is not an element of the apparatus as such it is unclear what is the shape of the rim.

Claim 3 is not further limiting for it is unclear what one considers well-defined or finishing conditions. There is no further structure claimed as for providing such conditions. The amended "for" clause of claim 3 is directed to an intended function of the flap. However it is unclear what further structure is provided to function as claimed. Any surface that comes in contact with a moving stream can prevent or terminate such stream from moving in the initial direction of flow or allow of a droplet to be deposited thereon. The claim does not provide any further structure than the surface.

Claim 5 is not further limiting. It is directed to the unclaimed liquid channel.

As to claim 15, it is unclear if the "one" and "another" ends of the flap are attached to the same gasket base. It appears as if the claim should read: . . . a gasket base and a first end of the hinge is attached to the flap and a second end of the hinge is attached to the gasket base.

Claim 20 would read more clearly if amended to read:...wherein the flap comprises a rim in the form of an ellipse.

Claims 22-23 attempt to further define/limit the device based on the unclaimed liquid channel.

As to claim 24, there is no antecedent basis for the hinge having restoring force.

Claims 1 and 31 are essentially duplicate claims. Both claims require the same identical hinged septum and deposition device. The only difference is what applicant

chooses to call or refer to the combination of elements. Claim 1 the combination is called a dispensing apparatus. In claim 31, the device is broadly an apparatus where the combination is references as liquid separation equipment. The broad apparatus is defined only by the same two elements. There is no structural difference in the claims. One of the claims should be canceled.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-3, 5-17, 22-25, and 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Chang et al. US 2003/0052074.

Chang et al. discloses the invention as claimed. See abstract, Figure 12, and [paragraph 0035].

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 4 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. US 2003/0052074.

Chang et al. does not disclose the wall or flap 36 as being manufactured from a foil material.

However, Chang et al. discloses suitable materials for forming the cover 52 include, but are not limited to, thin metallic foils (e.g., aluminum foil).

It would have been obvious to one of ordinary skill in the art at the time of the invention to recognize the wall 36 may be manufactured from the same type of materials.

Chang et al. discloses the claimed invention except for the ellipse. It would have been an obvious matter of design choice to change the shape of the opening and wall, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



Art Unit: 1797

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/  
Primary Examiner  
Art Unit 1797

brg